

**TOWN OF WEAVERVILLE**  
**Town Hall Council Chambers**  
**30 South Main Street**  
**Weaverville, NC 28787**

**AGENDA**  
**January 8, 2019**  
**Regular Workshop at 6:00 pm**

- |    |  |                                |
|----|--|--------------------------------|
| 1. | <b>Call to Order</b> .....   | <i>Presenter</i><br>Mayor Root |
| 2. | <b>Review of Proposed Code Amendments – Chapter 9, Nuisances</b> ..... | Town Attorney                  |
| 3. | <b>Continued Discussions Related to Growth</b> .....                   | Mayor Root                     |
|    | A. Ways to Achieve Diversity of Housing Options.....                   |                                |
|    | B. Water Allocation/Commitment Process and Procedures (Generally)..... |                                |
|    | C. Annexation Process and Procedures (Generally).....                  |                                |
|    | D. Extraterritorial Jurisdiction .....                                 |                                |
|    | E. Vested Rights .....   |                                |
| 4. | <b>Adjournment</b> .....   | Mayor Root                     |

**PROPOSED AMENDMENTS – NUISANCES**

**CHAPTER 9 – NUISANCES**

**ARTICLE I - GENERAL PROVISIONS**

**Sec. 9-100. – Title.**

This Chapter 9 of the Town’s Code of Ordinances may be referred to as the Town’s nuisance ordinance or public nuisance ordinance.

**Sec. 9-101. – Administration.**

The town’s law enforcement officers, code enforcement officer, and the town manager, or his or her designee, shall be responsible for the administration and enforcement of this chapter. The board of adjustment shall be the appeals board for all decisions made under this chapter unless otherwise provided.

**Sec. 9-102. – Concurrent jurisdiction.**

Nothing in this chapter shall be construed to limit the legal authority or powers of county health officials or officers of the town police department or fire department in enforcing other laws or health regulations, or in otherwise carrying out their duties.

**Sec. 9-103. – Violators and chronic violators, defined.**

For the purposes of this chapter, violator means the person creating the violation, the person operating any motor vehicle, machinery or equipment causing the violation, the violator’s employer, and/or the company, partnership, corporation or other person or entity which owns, possesses or controls the motor vehicle, machinery or equipment utilized by the violator.

A chronic violator is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three times under any provision of the town’s public nuisance ordinance.

**Sec. 9-104. – Investigation of conditions.**

The person(s) having administrative responsibilities under each article within this chapter, upon notice from any person of the existence of any of the conditions described in such article, shall, within a reasonable period of time, make or cause to be made such investigation as may be necessary to determine whether, in fact, such conditions constitute a violation of this chapter.

**Commented [JJ1]:** The following is proposed as a replacement to the existing Chapter 9. This is the same draft that was presented to Town Council in September 2018. Comments are noted throughout to highlight major changes in policy or areas for specific discussion.

**Commented [JJ2]:** A General Provisions section has been added in order to address provisions applicable to all articles and administration and enforcement of the nuisance chapter.

**Sec.9-105. – Enforcement and penalties; penalty not exclusive.**

Section 1-6 shall apply to all violations under this chapter. The imposition of a penalty under section 1-6 of this Code for violations of this chapter shall not prevent the revocation or suspension of any license, franchise, or permit issued or granted under the provisions of this Code.

Any condition designated as a nuisance in violation of this chapter may be summarily abated by the town directly or through a private contractor and such summary abatement shall be in addition to the civil and criminal penalties and other remedies as provided under section 1-6 of this Code.

Any town employee charged with enforcement and collection of abatement costs or civil penalties may, in consultation with the town manager and town attorney, reduce the penalties or costs assessed, based upon criteria set forth in department guidelines.

**Sec. 9-106. – Administrative fee for town abatement.**

An administrative fee in the amount of \$100 shall be assessed for all violations under this chapter that result in abatement action having to be taken by or on behalf of the town. Such administrative fee is considered restorative and is intended to provide compensation to the town for costs associated with the town’s code enforcement program, including the cost to monitor, control, prosecute, cure and/or correct the violation. As such, the amount declared herein is presumed to provide sufficient restoration to the town for its costs.

**Commented [JJ3]:** This administrative fee has been added in order to defray the administrative cost of nuisance related abatement.

**Sec. 9-107. – Cost of abatement declared a lien.**

The expense of any enforcement action taken by the town for violations of this chapter shall be paid by the person in violation of this article. If the expense is not paid, it shall be a lien on the land or the premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes.

**Commented [JJ4]:** As allowed by law the cost of abatement will be added to a tax bill if it is not paid within 30 days of being billed.

Upon completion of such removal and abatement, a statement shall be delivered to the town tax collector showing the exact cost of the abatement of the unlawful condition plus the administrative fee of \$100 as set out in Section 9-106 to cover the cost of notice and costs of collection as a civil penalty. The town tax collector shall thereupon mail to the owner of the subject property a bill covering the costs, if with reasonable diligence the name and address of such owner can be ascertained, and the amount of the bill shall become a lien on the property, and if not paid within 30 days shall be collected as in the manner provided for the collection of delinquent taxes.

Any town employee charged with enforcement and collection of abatement costs or civil penalties may, in consultation with the town manager and town attorney, reduce the penalties or costs assessed, based upon criteria set forth in department guidelines.

**Sec. 9-108. – Severability.**

Should any section or provision of this chapter be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so declared to be invalid.

**Sec. 9-109. – Conflicts with other provisions of town code.**

In the event of a conflict between a provision of this chapter and any other section of the Town’s Code of Ordinance, the more stringent provision shall apply.

**ARTICLE II - PUBLIC HEALTH NUISANCES**

**Sec. 9-200. – Authority and jurisdiction**

The Town of Weaverville hereby finds that it is necessary to define, prohibit, regulate and summarily abate acts, omissions, or conditions that are dangerous or prejudicial to the public health or public safety within the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-193 and § 160A-174.

**Sec. 9-201. – Nuisances prohibited; enumeration not exclusive**

The following enumerated and described conditions are hereby found, deemed, and declared to constitute a detriment, danger, and hazard to the public health and public safety and the same are found, deemed and declared to be public health nuisances wherever the same may exist and are hereby unlawful; however, this enumeration shall not be deemed or construed to be exclusive, limiting, or restrictive.

- (1) Any condition which constitutes a breeding ground or harbor for rats, mosquitoes, harmful insects, snakes, or other pests, or has the potential for becoming a breeding ground or harbor for such pests.
- (2) Hides, dried or green, provided the same may be kept when thoroughly cured and odorless.
- (3) Any concentration of combustible items including but not limited to mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes and rags.
- (4) A collection place, storage, or accumulation of old, worn out, broken, or discarded machinery, vehicle parts, junk, tires, tire rims and tubes, metal products, old clothes, rags, furniture, stoves, refrigerators, appliances, cans and containers, household goods, mattresses, boxes, paper, plumbing or electrical fixtures, glass products, brush, limbs, fencing materials, wood products (not including firewood).
- (5) Any collection of garbage, litter, food waste, human waste, animal waste, or any other rotten or putrescible matter of any kind.
- (6) Any condition which blocks, hinders, or obstructs in any way the natural flow of streams, branches, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.
- (7) Any improper or inadequate drainage on private property which causes flooding or interferes with the use of or endangers in any way the streets, sidewalks, parks, or other town-owned property of any kind; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.
- (8) Structures, remains of structures, or lots with a condition that is detrimental, dangerous, or hazardous to the public safety, health, or welfare. For purposes of the enforcement of this section, this shall be a condition which consists of one or more of the following:

**Commented [JJ5]:** In accordance with direction of Town Council, prohibited nuisances are limited to those that involve public health and safety. Situations that are more aesthetic in nature have not been prohibited.

As a result of limiting violations to public health nuisances, summary abatement is authorized – which means that violations can be cleaned up without court action.

- i. Glass, metal, or other sharp objects in accessible areas;
- ii. Holes, sinkholes, excavations, wells, or embankments without sufficient enclosure or covering to prevent persons from injury;
- iii. Surviving foundations, walls, or roofs that may collapse or that create heights of 3 feet or more in areas where they may be scaled;
- iv. Any substance which is hazardous or harmful to humans or pets;
- v. Any open or accessible utility lines such as natural gas, water, sewer, or electrical;
- vi. Structures or remains of structures open to the elements, which are a danger to children, tend to attract vagrants or persons intent on criminal activities or other activities that would constitute a public nuisance;
- vii. Structures ordered closed by a code compliance officer or other quasi-judicial authority which are reopened without cause or justification;
- viii. Structures, properties, or conditions posing a fire danger;
- ix. Structures, properties, or conditions likely to become a breeding place or habitat for rats, snakes or other pests.

Any owner of property who is in non-compliance with this subsection may enclose the portions of their property in violation with a secure fence of 5 feet in height in order to prevent the entry of humans until such time as the property is repaired to Code standards or completely demolish and is no longer in a detrimental, dangerous or hazardous state. Such enclosed shall be deemed in compliance with this subsection provided the enclosed nuisance condition does not and will not reach beyond the perimeter of the property.

- (9) Any indoor furniture, indoor appliances, or metal products of any kind or nature openly kept which are broken or inoperable or have jagged edges of metal or glass, or areas of confinement.
- (10) Any use of carports, open porches, decks, open garages and other open outdoor areas that are visible from the street that increases the likelihood of fire, may conceal dangerous conditions, or may be a breeding place or habitat for rats, snakes, or other pests, including, but not limited to, storage or collection of boxes, appliances, furniture (not including outdoor furniture), motor vehicle parts (including seats), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods;
- (11) Any accumulation of mud or debris on a public street related to a construction, timbering, or other similar land use project; violator will be given 24 hours to clean or clear the street, however, if it is found by the town that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable.
- (12) Any growth or overgrowth of grass, weeds, or other vegetation that is greater than 12 inches on the average, except as provided below:
  - (a) Natural landscape areas or wooded lots. This requirement shall not apply to lots that have never been cleared in anticipation of development, lots that have been landscaped or replanted to appear as natural, lots covered with trees, undeveloped areas. Natural landscape areas and wooded lots shall be maintained and shall not harbor, create, nor allow to exist any condition defined as a nuisance or determined by the code enforcement officer to be a condition which poses a health hazard for the general welfare of the public. Natural landscape vegetation shall not overhang into the public street right-of-way.

**Commented [JJ6]:** The provisions have been changed from requiring cutting twice per year as it is difficult to enforce. A maximum height of 12 inches for grass or weeds has been added and exceptions have been included for naturally landscaped areas, properties that are larger than 1 acre in size, etc.

- (b) Ravines, creek banks, steep slopes. This requirement shall not apply to those properties, or those portions of properties, consisting of land features such as ravines, creek banks or steep slopes where maintenance would be unsafe and/or the chance of erosion would increase if the vegetation were decreased.
- (c) Lots exceeding one acre in size. This requirement shall not apply to any lot exceeding one acre in size, or any combined parcels under common ownership that exceed one acre in size, except that such lot(s) must comply with the requirements of this subsection to a depth of 10 feet from the public street or sidewalk and the vegetation on such lots must be cut at least twice a year.
- (d) Hay production. This requirement shall not apply to any property that is cultivating hay for use or sale as an agricultural commodity.
- (e) Ornamental grasses. Ornamental grasses chosen for features like color and form, including but not limited to switch grass, pampas grass, and bamboo, shall not be treated as nuisance vegetation under this section.
- (f) Any and all grass or weeds growing in any public sidewalk or public street and any hedges or plantings bordering thereon not properly trimmed;
- (g) Any accumulation of dead weeds, grass, brush, or undergrowth;
- (h) Any and all trees or bushes that are dead, diseased, or not properly trimmed, and which present a clear and present danger or hazard to town streets and sidewalks and the pedestrian and motoring public.
- (i) Any object or vegetative growth within the sight distance at or near street rights-of-way as the same constitutes a hazard to the town and the health and safety of motorists and pedestrians.
- (j) Any growth of noxious vegetation, including poison sumac (Rhus vernix), poison ivy (Rhus radicans), or poison oak (Rhus toxicodendron), in a location likely to be accessible to the general public.
- (k) Any other condition specifically prohibited in this article, or any other condition specifically declared to be a nuisance or a danger to the public health and/or public safety of inhabitants of the town and a public nuisance by the town council.

**Commented [JJ7]:** This provision allows Town Council to declare any specific situation a nuisance upon proper findings.

**Sec. 9-202. – Open areas defined**

Open areas are defined as those areas of property or a portion thereof that is open, including building openings of residential dwelling units that are open to the exterior, such as attached carports or porches, and any other exterior portions of properties ordinarily exposed to public view.

**Sec. 9-203. – Notice to abate.**

If any person shall violate the provisions of this article, it shall be the duty of the town to give notice to the owner or to any person in possession of the subject property, as provided in section 9-205, directing that all unlawful conditions existing on the property be abated within 10 days from the date of such notice, except as provided in section 9-204 below.

**Commented [JJ8]:** Procedures concerning abatement (correcting the violation) have been strengthened and clarified.

The notice of abatement shall contain the following:

- a. A statement that conditions exists on the property which constitute a public health nuisance;
- b. The condition existing;

- c. The location of such condition;
- d. A statement ordering the owner and the occupant or person in possession of the premises to abate the nuisance, and that, unless the condition is abated within 10 days (or such other reasonable period of time for abatement) from the mailing of the notice as specified in section 9-205, the conditions constituting a nuisance will be abated by the town and the cost of abatement shall constitute a lien against the premises;
- e. A statement indicated how and with whom an appeal from the notice of abatement can be filed.

**Sec. 9-204. – Emergency abatement by town.**

If, in the opinion of the code enforcement officer, the unlawful condition is such that it is of imminent danger or peril to the public, then any authorized representative of the town may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property as is provided in this article.

The code enforcement officer or a law enforcement officer may enter upon the premises for the purpose of abating the nuisance and may summarily remove, abate, or remedy any condition in the town limits that is a prohibited nuisance under this article.

**Sec. 9-205. – Service of notice to abate.**

The owner and/or occupant of subject property shall be notified of violation of this article by personal delivery of said notice or by posting in a conspicuous place on the premises affected and by regular and registered or certified mail, return receipt requested. If such registered or certified notice is refused or is returned unclaimed, but the regular mail is not returned by the post office within 10 days after the mailing, the service shall be deemed sufficient. The person mailing such order by regular mail shall certify that fact and the date thereof and such certificate shall be deemed conclusive in the absence of fraud. If the name of the owner cannot be ascertained, then the notice shall be served on any person in possession of the subject property.

Any such notice may be served by any authorized representative of the town manager, the code enforcement officer or by any law enforcement officer of the town.

The town may notify a chronic violator of the town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by registered or certified mail.

**Sec. 9-206. – Defect in notice not to affect lien.**

Any defect in the method of giving notice required by this section, or in the form thereof, or the giving of such notice to an improper person, shall not prevent the town, in any case where the work of abating an unlawful condition upon any property is caused by the town, from collecting the cost thereof from the owner, nor shall it affect the validity of the lien on the property for such cost.

**Sec. 9-207. – Appeal notice.**

Within the time frame stated in the notice to abate, the owner or occupant of the property where the nuisance exists may appeal the findings of the town manager, his or her designee, or the code enforcement officer to the Weaverville Board of Adjustment by giving written notice of appeal to such officer signing the notice to abate. An appeal stays the abatement of the nuisances until a final determination by the board of adjustment. In the event no appeal is taken, the town may proceed to abate the nuisance.

**Commented [JJ9]:** Appeals go to the Board of Adjustment. This board was selected as the appeals authority as it routinely handles quasi-judicial proceedings such as appeals and is trained to do so.

**Sec. 9-208. – Appeal hearing; determination by the board of adjustment.**

In the event an appeal is filed as provided in this article, the board of adjustment, after hearing all interested persons and reviewing the findings of the town manager, his or her designee or the code enforcement officer, may affirm or reverse the finding that a nuisance exists in the town. If the board of adjustment shall determine that the findings are correct and proper, it shall adopt an order specifically declaring the condition existing on the property to be a danger and hazard to the health and safety of the inhabitants of the town and a public health nuisance and direct the town to cause such conditions to be abated.

**Sec. 9-209. – Abatement by town where owner fails to abate.**

Upon the failure of the owner or person in possession of any premises to abate an unlawful condition existing thereupon within the time prescribed, it shall be the duty of an authorized town representative to cause the removal and abatement of such unlawful condition therefrom. The town manager, code enforcement officer, law enforcement officer, or authorized town representative are hereby given full power and authority to enter upon the premises upon which a nuisance is found to exist under the provisions of this article for the purpose of abating the nuisance and may summarily remove, abate, or remedy any condition in the town limits that is a prohibited nuisance under this article.

**Sec. 9-210. – Cost of abatement declared a lien.**

The expense of any enforcement action taken by the town for violations of this article shall be paid by the person in violation of this article. If the expense is not paid, it shall be a lien on the land or the premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes.

Upon completion of such removal and abatement, a statement shall be delivered to the town tax collector showing the exact cost of the abatement of the unlawful condition plus the administrative fee of \$100 as set out in Section 9-106 to cover the cost of notice and costs of collection as a civil penalty. The town tax collector shall thereupon mail to the owner of the subject property a bill covering the costs, if with reasonable diligence the name and address of such owner can be ascertained, and the amount of the bill shall become a lien on the property, and if not paid within 30 days shall be collected as in the manner provided for the collection of delinquent taxes.

**ARTICLE III - ABANDONED AND JUNKED MOTOR VEHICLES**

**Sec. 9-300. – Authority and jurisdiction.**

The Town of Weaverville hereby finds that regulation of abandoned and junked motor vehicles is necessary and desirable to protect the health and safety of the residents of the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-303.

**Sec. 9-301. – Administration.**

The chief of police and code enforcement officer, and their designees, shall be responsible for the administration and enforcement of this article.

The chief of police, or his or her designee, is authorized to designate a motor vehicle as an abandoned motor vehicle as defined in this article, and shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the town and on property owned or operated by the town. The chief of police shall further be responsible for administering the removal and disposition of vehicles designated as abandoned and/or junked motor vehicles from private property.

The town may contract with private tow companies to remove, store, and dispose of abandoned motor vehicles and junked motor vehicles in compliance with this article and applicable North Carolina law.

**Sec. 9-302. – Administrative search and inspection warrants.**

The authorized officials, upon notice from any person of the existence of any of the conditions described in this article, shall make or cause to be made such investigation as may be necessary to determine whether, in fact, such conditions constitute a violation of this article.

The authorized officials are authorized to secure an administrative search and inspection warrant, as provided by NCGS 15-27.2, in order to conduct any necessary inspection of the premises on which an abandoned motor vehicle or junked motor vehicle may be located and to obtain evidence to determine whether there is any violation of any provisions of this article.

**Sec. 9-303. – Immunity.**

In accordance with NCGS 160A-303(f), no person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this article.

**Sec. 9-304. – Definitions.**

Abandoned motor vehicle means any motor vehicle:

- (1) left upon a street or highway in violation of the law or ordinance regulating or prohibiting parking; or

**Commented [JJ10]:** This Article has been drafted to be consistent with NCGS 160A-303.

Vehicles abandoned on public streets, public property, or private property with the permission or request of the private property owner, must be removed.

Abandoned or junked vehicles on private property can only be removed from private property without permission if the vehicle is causing a traffic hazard.

- (2) left on property owned or operated by the Town for longer than 24 hours; or
- (3) left in any Town owned or operated parking lot for longer than 7 days; or
- (4) left on any street or highway for longer than 7 days or is determined by law enforcement to be a hazard to the motoring public; or
- (5) left on private property without the consent of the owner, occupant, or lessee thereof for longer than 2 hours.

**Commented [JJ11]:** At least one public parking lot on Main Street is used regularly by nearby residents to park overnight.

Some conversation might be appropriate on the issue of whether Town public parking lots are available for overnight parking.

Authorized officials are the chief of police and the code enforcement officer, and their respective designees.

Junked motor vehicle means a vehicle that does not display a current license plate and one of the following conditions is present:

- (1) is partially dismantled or wrecked; or
- (2) cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) is more than 5 years old and appears to be worth less than \$500.

Motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or which attached to any self-propelled vehicle. Use of the term vehicle and trailer in this article shall mean motor vehicle. For purposes of this article an electric personal assistive mobility device as defined in NCGS § 20-4.01(7b) is not a motor vehicle.

#### **Sec. 9-305. – Exemptions.**

This article does not apply to any motor vehicle in an enclosed building or any motor vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any motor vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town.

#### **Sec. 9-306. – Abandoned motor vehicles unlawful.**

It shall be unlawful for the registered owner or person entitled to the possession of the vehicle to allow any abandoned or junked motor vehicle to remain on any public street, public property, or private property in violation of this article.

It shall be unlawful for the registered owner or person entitled to the possession of an abandoned motor vehicle, or for the owner, lessee, or occupant of the real property upon which an abandoned motor vehicle is located to leave or allow the motor vehicle to remain on the property after the motor vehicle has been ordered removed.

#### **Sec. 9-307. – Removal of abandoned motor vehicles from public streets and public property.**

Any abandoned motor vehicle on the public streets or public property may be removed by or under the direction of a law enforcement officer or a code enforcement officer. Notice of each removal shall be given to the owner of the vehicle as promptly as possible in accordance with the pre-tow and post-tow notice provisions as stated in this article.

**Sec. 9-308. – Removal of abandoned or junked motor vehicles from private property.**

Any abandoned motor vehicle on private property may be removed by or under the direction of a law enforcement officer or a code enforcement officer upon the written request of the owner, lessee, or occupant of the premises.

Any abandoned or junked motor vehicle that is located on private property but is found to be a traffic hazard may be removed by or under the direction of a law enforcement officer or a code enforcement officer.

It shall be unlawful for the registered owner or person entitled to the possession of an abandoned motor vehicle, or for the owner, lessee, or occupant of the real property upon which an abandoned motor vehicle is located to leave or allow a motor vehicle to remain on the property after the motor vehicle has been ordered removed.

**Sec. 9-309. – Removal and disposition at the request of the owner.**

A law enforcement officer or code enforcement officer may, with the consent of the owner of a motor vehicle, remove and dispose of any motor vehicle as a junked motor vehicle regardless of the value, condition, or age of such motor vehicle and without compliance with the notice, hearing, or sale procedures in this article.

**Sec. 9-310. – Pre-tow notice; exception.**

Except as provided herein, any junked or abandoned motor vehicle in violation of this article may be removed by towing only after a warning notice is provided. Such notice shall be affixed to the windshield or some other conspicuous place on the vehicle. That notice shall state that the motor vehicle will be removed on a specified date, no sooner than 7 days after the notice is affixed to the motor vehicle, unless the motor vehicle is brought into compliance by the owner or legal possessor prior to that time. The notice shall state the procedure the owner must follow to request a probable cause hearing before the towing.

Prior notice need not be given to remove an abandoned or junked motor vehicle if a law enforcement officer determines that there is a special need for prompt action to eliminate obstructions to the flow of traffic or immediate removal is necessary to maintain and protect the public safety and welfare. Circumstances justifying the removal of such vehicles without prior notice include, but are not limited to, the following:

- (1) For vehicles left on the public streets and highways, town council determines that immediate removal of such vehicles may be warranted when they are:
  - (i) obstructing traffic;
  - (ii) left on the street or highway in violation of a law or ordinance prohibiting parking;
  - (iii) parked in a “no stopping” or “no standing” zone;
  - (iv) parked in a loading zone.

(2) For vehicles left on town-owned property or on private property, such vehicles may be removed without giving prior notice only in those circumstances where the chief of police or code enforcement officer make written findings that there is a special need for prompt action to protect and maintain the public health, safety, and welfare, including, but not limited to, the following circumstances:

- (i) Vehicles blocking or obstructing ingress or egress to businesses or residences;
- (ii) Vehicles parked in such a location or manner as to pose a traffic hazard;
- (iii) Vehicles that represent an imminent threat to life or property.

**Sec. 9-311. – Post-towing procedures; post-tow notice.**

- (a) Post-towing procedures shall be consistent with Article 7A of Chapter 20 of the North Carolina General Statutes.
- (b) Whenever a vehicle with a valid registration plate or registration number is towed, the authorizing person shall notify the last known registered owner of the following:
  - (i) The description of the vehicle;
  - (ii) The place from which the vehicle may be released;
  - (iii) The violation with which the owner is charged;
  - (iv) The procedure the owner must follow to have the vehicle returned to him or her;
  - (v) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in North Carolina, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reachable by telephone, notice shall be mailed to his or her last known address unless he or she, or their agent, waives this notice in writing.

- (c) Whenever a vehicle with neither a valid registration plate nor registration is towed as provided herein, the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information listed in subsection (a) above. Reasonable efforts shall be presumed if the requirements of the pre-tow notice have been followed.

**Sec. 9-312. – Hearing; probable cause hearing.**

- (a) The owner or any other person entitled to claim possession of a motor vehicle towed pursuant to this article may request a hearing either before towing or after towing of the motor vehicle. The only issue at the hearing is whether or not the town can demonstrate probable cause to tow the motor vehicle. The town manager, or his or her designee, shall serve as the hearing officer. A request for hearing shall be filed with the code enforcement officer, and he or she shall set the hearing within 3 days of the date of the hearing request. The owner or any other person entitled to claim possession of the vehicle shall be notified of the time and place of the hearing, the specific

grounds for the classification of the vehicle as an abandoned motor vehicle or junked motor vehicle, and the reason for removal of the vehicle.

- (b) The owner, the person who towed the vehicle, the person who authorized the towing, and any other interested parties may present evidence at the hearing. The person authorizing the towing and the person who towed the vehicle may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.
- (c) If the hearing is pre-tow and the hearing officer finds that the town has probable cause, the motor vehicle will be removed and the cost for removal will become a lien on the motor vehicle. If the hearing officer finds that probable cause does not exist, the town will not tow the vehicle and no costs will be charged.
- (d) If the hearing is post-tow and the hearing officer finds that the town had probable cause, the lien for cost of removal shall remain. If the hearing officer finds that probable cause did not exist, the lien shall be extinguished.
- (e) The hearing officer shall prepare a written report within 5 days of the hearing stating his or her conclusions concerning whether the vehicle was in violation of this article and the reasons and evidence upon which the conclusion was based. The owner or any other person entitled to claim possession of the vehicle shall be notified of this decision by regular mail.
- (f) Any aggrieved party may appeal the hearing officer's decision to the town's board of adjustment by filing an appeal in writing within 15 days after the date of the report of the hearing officer, but not thereafter.

**Sec. 9-313. – Obtaining possession of a towed vehicle; payment of towing fees.**

- (a) At any stage in a proceeding under this article, including before the probable cause hearing, the owner or other person entitled to possession may obtain possession of a vehicle that has been towed in accordance with this article by:
  - (1) Paying the towing fee and costs incident to such fee; or
  - (2) Posting a bond for double the amount of the towing fee.
- (b) The person who tows a vehicle under this article is responsible for collecting towing fees from the owner of that vehicle before that owner can obtain possession of the vehicle. In addition, prior to obtaining possession of the towed vehicle, the owner must pay to the town an administrative fee of \$100 as set out in section 9-106.

**Sec. 9-314. – Liens on towed vehicles; sale of towed vehicles.**

Liens for nonpayment of charges and fees related to the towing of vehicles under this article, and the sale of such vehicles in enforcement of those liens, shall be handled in accordance with Article 1 of Chapter 44A of the North Carolina, by the person towing vehicles under this article.

#### ARTICLE IV - NOISE

##### Sec. 9-400. – Authority and jurisdiction.

The Town of Weaverville hereby finds that it is necessary to define, prohibit, regulate and summarily abate acts, omissions, or conditions that are dangerous or prejudicial to the public health or public safety within the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-193 and § 160A-174.

##### Sec. 9-401. – Unlawful noise.

It shall be unlawful to emit, or to cause or permit to be made, any unreasonably loud, annoying, frightening, loud and disturbing, or unnecessary noise. Specifically, it shall be unlawful to emit noise of such character, intensity, or duration as to be detrimental to the life or health of reasonable persons of ordinary sensibilities. Factors to consider in determining whether a violation exists include, but are not limited to:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;
- (d) Whether the origin of the noise is natural or unnatural;
- (e) The volume and intensity of the background noise, if any;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of the day or night the noise occurs;
- (j) The duration of the noise; and
- (k) Whether the noise is recurrent, intermittent, or constant.

##### Sec. 9-402. – Presumption in prosecution for noise violation.

The complaints of 2 or more persons, at least one of whom resides in a different home from the other complaining person or persons, or the complaint of one or more persons, when combined with the complaint of a duly authorized investigating person, shall be prima facie evidence that such sound is a loud and annoying, frightening, loud and disturbing, unreasonably loud or unnecessary noise.

**Commented [JJ12]:** The provisions regarding noise are largely consistent with current ordinance. Factors have been added to aid in the determination of a violation. A provision has also been added that provides that two independent complaints create a presumption of a violation. These added provisions will strengthen the ordinance.

**OPTIONAL PROVISIONS FOR ARTICLE III**

**Sec. 9-. – Junked motor vehicles that are declared health or safety hazards are unlawful.**

It shall be unlawful for the registered owner or person entitled to the possession of the vehicle to allow any junked motor vehicle that is declared by town council to be a health or safety hazard to remain on any public street, public property or private property. In determining whether there is a health, safety, or fire hazard, town council may take into consideration that the motor vehicle is found to be:

- (i) A breeding ground or harbor for mosquitoes, other insects, rats, snakes or other pests; or
- (ii) A point of collection of pools or ponds of water; or
- (iii) A point of concentration of quantities of gasoline, oil, or other flammable or explosive material; or
- (iv) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; or
- (v) So situated or located that there is a danger of it falling or turning over; or
- (vi) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- (vii) One which has parts which are jagged or contain sharp edges of metal or glass; or
- (viii) A condition or circumstance which exposes the general public to safety, health, or fire hazards.

It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle that is declared by town council to be a health or safety hazard, or for the owner, lessee, or occupant of the real property upon which that junked motor vehicle is located to leave or allow the motor vehicle to remain on the property after the motor vehicle has been ordered removed.

**Sec. 9-. – Removal of junked motor vehicles from private property.**

A junked motor vehicle on private property may be removed by or under the direction of a law enforcement officer or a code enforcement officer without the written request or consent of the owner, lessee, or occupant of the premises when town council has declared in writing the vehicle to be a health or safety hazard and ordered its removal.

**Commented [JJ13]:** Should Town Council wish to broaden the scope of its junked vehicle provisions to matters that are more aesthetic in nature the following provisions can be considered.

**OPTIONAL PROVISIONS FOR ARTICLE IV**

**Sec. 9-. – Prohibited noises; enumeration not exclusive.**

Except when specifically allowed as a part of a special event permitted under Town Code, in addition to any other violations of this chapter, the following acts are specifically declared to be unreasonably loud and annoying, frightening, loud and disturbing, or unnecessary noise, the emission of which shall be unlawful. The following enumeration shall not be deemed to be exclusive:

- (a) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
- (b) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles.
- (c) Amplified sound or musical instruments played in such a manner or with such volume during the nighttime hours as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, hotel, motel or other type of residence.
- (d) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.
- (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as warning of danger.
- (f) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (g) The excavation of land, erection, demolition, alteration or repair of any building or other structure in a residential district other than between the hours of 7:00 a.m. and 9:00 p.m., except by permission of the code enforcement officer when, in the opinion of the code enforcement officer, such work will not create objectionable noise; upon complaint in writing of the occupant of property near the location of the work, the code enforcement shall immediately revoke the permission and the work outside of allowable hours shall be immediately discontinued. The code enforcement officer may permit emergency work in the preservation of public health or safety at any time.
- (h) The creation of any excessive noise on any street adjacent to any school, institution of learning or court, while the same are in session, or within one hundred fifty (150) feet of any hospital or other residential healthcare facility, which unreasonably interferes with the work of such institution or which disturbs or unduly annoys patients in the hospital.
- (i) The creation of loud and excessive noise in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates and containers.
- (j) The shouting and crying of peddlers, barkers, hawkers or vendors which disturbs the quiet and peace of the neighborhood.
- (k) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise.
- (l) The conducting, operating or maintaining of any garage or filling station, or the repair, rebuilding or testing of any motor vehicle in any residential district, so as to cause loud or offensive noises to be emitted therefrom during the nighttime hours of 9:00 pm to 7:00 am.

**Commented [JJ14]:** If Town Council wishes to be more specific with regard to its noise provisions, the following can be considered.

- (m) The firing or discharging of firearms in the streets or elsewhere for the purpose of making noise or disturbance.
- (n) The creation of excessive noise by the operation of an airplane over the town by stunting, diving or otherwise operating an airplane for the purpose of advertising or otherwise.
- (o) No person shall own, keep, harbor, or have in his or her possession, any dog, bird, or other animal which, by frequent or habitual crying, howling, yelping, barking, squawking, meowing, or otherwise, causes loud noises which disturbs the quiet, comfort or repose of any person.
- (p) The operation on public property or on public vehicular areas of any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device when operated in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, or vehicle in which it is located, is prohibited and is a violation of this section.

**Sec. 9-. – Sounds impacting residential life.**

It shall be unlawful to carry on the following activities in any residentially zoned area of the town during the nighttime hours of 9:00 pm to 7:00 am:

- (a) Operation of refuse collection machinery;
- (b) Operation of construction machinery;
- (c) Operation of garage machinery;
- (d) Operation of lawn mowers and other domestic tools used outside.

This section shall not apply to emergency operations designed to protect the public health and safety.

**Sec. 9-. – Burden of persuasion regarding exceptions.**

In any enforcement proceeding concerning violations of this article, if an exception stated in this article would limit an obligation, limit a liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of persuasion that the exception applies and that the terms of the exception have been met.